

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Joint Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. DATES

Trial Date: Monday, 8/25/2008, 8:30 a.m., 1 - 2 days

Pretrial Conference: **Tuesday, 8/12/2008, 4:00 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 7/16/2008**

Close of Discovery: **Friday, 6/4/2008**

2. DISCLOSURE AND DISCOVERY

The parties are reminded that a failure to voluntarily disclose information pursuant to Federal Rule of Civil

1 Procedure 26(a) or to supplement disclosures or discovery
2 responses pursuant to Rule 26(e) may result in exclusionary
3 sanctions. Thirty days prior to the close of non-expert
4 discovery, lead counsel for each party shall serve and file a
5 certification that all supplementation has been completed.

6 In the event a discovery dispute arises, **lead counsel** for
7 each party shall meet in person or, if counsel are outside the
8 Bay Area, by telephone and make a good faith effort to resolve
9 their dispute. Exchanging letters or telephone messages about
10 the dispute is insufficient. The Court does not read
11 subsequent positioning letters; parties shall instead make a
12 contemporaneous record of their meeting using a tape recorder
13 or a court reporter.

14 In the event they cannot resolve their dispute, the
15 parties must participate in a telephone conference with the
16 Court **before** filing any discovery motions or other papers.
17 The party seeking discovery shall request a conference in a
18 letter filed electronically not exceeding two pages (with no
19 attachments) which briefly explains the nature of the action
20 and the issues in dispute. Other parties shall reply in
21 similar fashion within two days of receiving the letter
22 requesting the conference. The Court will contact the parties
23 to schedule the conference.

24 3. MOTIONS

25 Consult Civil Local Rules 7-1 through 7-5 and this
26 Court's standing orders regarding motion practice. Motions
27 for **summary judgment** shall be accompanied by a statement of
28 the material facts not in dispute supported by citations to

1 admissible evidence. The parties shall file a joint statement
2 of undisputed facts where possible. If the parties are unable
3 to reach complete agreement after meeting and conferring, they
4 shall file a joint statement of the undisputed facts about
5 which they do agree. Any party may then file a separate
6 statement of the additional facts that the party contends are
7 undisputed. A party who without substantial justification
8 contends that a fact is in dispute is subject to sanctions.

9 4. SETTLEMENT

10 This case has referred to the Honorable Maria-Elena James
11 to conduct a settlement conference that is set to go forward
12 on April 3, 2008. The parties should promptly notify the
13 court whether the case is resolved at the settlement
14 conference.

15 5. PRETRIAL CONFERENCE

16 Not less than thirty days prior to the date of the
17 pretrial conference, the parties shall meet and take all steps
18 necessary to fulfill the requirements of this Order.

19 Not less than twenty-one days prior to the pretrial
20 conference, the parties shall: (1) serve and file a joint
21 pretrial statement, containing the information listed in
22 **Attachment 1**, and a proposed pretrial order; (2) serve and
23 file trial briefs, Daubert motions, proposed findings of fact
24 and conclusions of law, and statements designating excerpts
25 from discovery that will be offered at trial (specifying the
26 witness and page and line references); (3) exchange exhibits,
27 agree on and number a joint set of exhibits and number
28 separately those exhibits to which the parties cannot agree;

1 (4) deliver all marked trial exhibits directly to the
2 courtroom clerk, Ms. Scott; (5) deliver one extra set of all
3 marked exhibits directly to Chambers; and (6) submit all
4 exhibits in three-ring binders. Each exhibit shall be marked
5 with an exhibit label as contained in **Attachment 2**. The
6 exhibits shall also be separated with correctly marked side
7 tabs so that they are easy to find.

8 No party shall be permitted to call any witness or offer
9 any exhibit in its case in chief that is not disclosed at
10 pretrial, without leave of Court and for good cause.

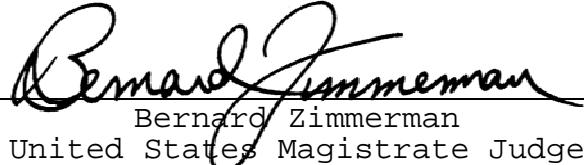
11 Lead trial counsel for each party shall meet and confer
12 in an effort to resolve all disputes regarding anticipated
13 testimony, witnesses and exhibits. All Daubert motions will
14 be heard at the pretrial conference. Not less than eleven
15 days prior to the pretrial conference, the parties shall serve
16 and file any objections to witnesses or exhibits or to the
17 qualifications of an expert witness. Daubert motions shall be
18 filed and served not less than twenty-one days prior to the
19 conference. Oppositions shall be filed and served not less
20 than eleven days prior to the conference. There shall be no
21 replies.

22 All motions, proposed findings of fact and conclusions of
23 law and trial briefs shall be e-mailed in WordPerfect or Word
24 format to the following address: bzpo@cand.uscourts.gov.

25 At the time of filing the original with the Clerk's
26 Office, two copies of all documents (but only one copy of the
27 exhibits) shall be delivered directly to Chambers (Room 15-
28 6688). Chambers' copies of all pretrial documents shall be

1 three-hole punched at the side, suitable for insertion into
2 standard, three-ring binders.

3 Dated: March 4, 2008

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5 Bernard Zimmerman
6 United States Magistrate Judge

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26 **EXAMPLE PROPOSED JURY INSTRUCTION**
27 **For Chambers of Magistrate Judge Zimmerman**

28 A proposed jury instruction should contain the following
elements in the following order: (1) the name of the party
submitting the instruction; (2) the title of the instruction;

(3) the text of the instruction; (4) the authority for the instruction; (5) blank boxes for the Court to note whether it gives the instruction, refuses to give it, or gives it as modified. The following proposed instruction contains these elements.

[Title]

[Text]

[Authority]

GIVEN REFUSED GIVEN AS MODIFIED

1 **ATTACHMENT 1**

2 The parties shall file a joint pretrial conference
3 statement containing the following information:

4 (1) **The Action.**

- 5 (A) Substance of the Action. A brief
6 description of the substance of
7 claims and defenses which remain
8 to be decided.
- 9 (B) Relief Prayed. A detailed
10 statement of each party's
11 position on the relief claimed,
12 particularly itemizing all
13 elements of damages claimed as
14 well as witnesses, documents or
15 other evidentiary material to be
16 presented concerning the amount
17 of those damages.

18 (2) **The Factual Basis of the Action.**

- 19 (A) Undisputed Facts. A plain and
20 concise statement of all
21 relevant facts not reasonably
22 disputable, as well as which
23 facts parties will stipulate for
24 incorporation into the trial
25 record without the necessity of
26 supporting testimony or
27 exhibits.
- 28 (B) Disputed Factual Issues. A plain
29 and concise statement of all
30 disputed factual issues which
31 remain to be decided.
- 32 (C) Agreed Statement. A statement
33 assessing whether all or part of
34 the action may be presented upon
35 an agreed statement of facts.
- 36 (D) Stipulations. A statement of
37 stipulations requested or
38 proposed for pretrial or trial
39 purposes.

40 (3) **Trial Preparation.**

41 A brief description of the efforts the parties have made
42 to resolve disputes over anticipated testimony, exhibits and
43 witnesses.

- 44 (A) Witnesses to be Called. In lieu

of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

- (B) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.
 - (C) Use of Discovery Responses. In lieu of FRCP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission. Counsel shall state any objections to use of these materials and that counsel has conferred respecting such objections.
 - (D) Further Discovery or Motions. A statement of all remaining motions, including motions in limine.

(4) Trial Alternatives and Options.

- (A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
 - (B) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses.
 - (C) Bifurcation, Separate Trial of Issues. A statement of whether bifurcation or a separate trial

1 of specific issues is feasible
2 and desired.

3 **(5) Miscellaneous.**

4 Any other subjects relevant to the trial of the action,
5 or material to its just, speedy and inexpensive determination.

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